IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO. 569 OF 2003

IN

SUIT NO.2128 OF 2000

Balan Electronic Ltd .. Plaintiff

versus

Hagel Capsules Industries Ltd .. Defendant

Mr.D.R.Jhuriya for Plaintiff.

Mr. S.C.Naidu i/b C.R.Naidu & Co for Defendant.

CORAM : D.G. KARNIK, J

DATED : 6th April 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff in a suit for recovery of the money due for the electric work carried out by the plaintiff for the defendant.

2. According to the plaintiff, at the request of the defendant, it submitted a quotation to the defendant on 10th June, 1997 to carry out the work. He quoted Rs.10,75,000/- and the defendant accepted the said quotation by letter dated 26th June, 1997. He paid to the plaintiff Rs. 6,00,000/-. As the defendant has not paid the balance money, the plaintiff has filed this suit for recovery of the amount.

3. By filing an affidavit in reply, the defendant opposes the Summons for Judgment and prays for unconditional leave to defend the suit. The defendant contends that the plaintiff never submitted the quotation on 10th June, 1997 and further contends that two letters dated 26th June, 1997 and 11th May, 1998 (Exhibit B and C to the suit) are bogus and fabricated and that he had never written these letters to the plaintiff. According to him the contract was oral and the total price agreed was Rs.7,00,000/- out of which Rs.6,00,000/- have been paid. The balance Rs.1,00,000/- was withheld because the work was not proper.

4. Since the defendant has denied his signatures on the letters dated 26th June, 1997 and 11th May, 1998

the plaintiff would be required to prove at trial that he had submitted written offer and it was accepted by the defendant by the letter dated 26th June, 1997. He would further be required to prove the letter dated 11th May, 1998 which the defendant has denied to have issued.

5. It is worthwhile to note that the plaintiff had filed Company Petition No. 597 of 1999 for winding up of the defendant company for non payment of the very dues which are claimed in this suit. By an order dated 21st February, 2000 the Company Court directed the defendants to deposit Rs.1,00,000/- and subject to the said deposit dismissed Company Petition. In accordance with the said order of the Company Court, the defendant has deposited Rs.1,00,000/- in court. In my view, the said amount of Rs.1,00,000/- should be treated as a deposit in this suit and leave to defend the suit should be granted to the defendants.

6. Hence, the defendants is granted leave to defend the suit subject to the condition that the amount of Rs.1,00,000/- which has been deposited in this court in pursuance of order passed in Company Petition No. 597 of 1999 shall be treated as deposit to the account

of this suit and would not be withdrawn by the defendant until the decision of this suit.

7. Suit is transferred to the list of commercial causes. The defendants to file the written statement within four weeks.

D.G.KARNIK, J